

Sweeny, Texas
Wellhead Protection Ordinance

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General Ordinance

Adopted 1990

WELLHEAD PROTECTION ORDINANCE (12-11-90) MS

AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE CITY OF SWEENY, TEXAS PROVIDING FOR THE WELLHEAD PROTECTION; FINDINGS OF FACT; DECLARING THE PURPOSE OF THE ORDINANCE; PROVIDING OF METHODS OF REDUCTION OF POTENTIAL CONTAMINATION; PROVIDING THE POWERS AND DUTIES OF THE BOARD OF ALDERMEN; PROVIDING FOR COMPLIANCE; PROVIDING THE SCOPE OF THE ARTICLE REQUIRING PERMITS; PROVIDING A PROCEDURES FOR ISSUANCE OF PERMIT FEES, THEREFOR ADDITIONAL PERMITS; PROVIDING FOR DISPOSITION OF FEES; REQUIRING CASING OF WELLS; PROHIBITING CONTAMINATION OF OTHER WATER SERVICES; PROHIBITING DEFECTIVE WELLS, CONTROLLING ABANDONED WELLS, EXTENDING THE PROVISION ORDINANCE TO

WELLS OR DRILLING WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE CITY OF SWEENY, TEXAS PROVIDING FOR ABATEMENT OF NUISANCES; PROVIDING PENALTIES OF NOT LESS THAN TEN (\$10.00) NOR MORE THAN TWO THOUSAND (\$2,000.00), AND THAT EACH DAY SUCH VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE; PROVIDING GENERAL PROVISION; PROVIDING FOR ADMINISTRATION OF THIS ORDINANCE; PROVIDING FOR VARIANCES AND PROCEDURES THEREFORE; AND PROVIDING A SAVING CLAUSE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SWEENY, TEXAS:

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ARTICLE I
STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHOD

Section 1. Statutory Authorization

WHEREAS, Article 1175, Subdivision 19 of the Texas Revised Civil Statutes states in pertinent part that a city has the power to prohibit the pollution of any stream, drain, or tributaries thereof, which may constitute the source of water supply of any city and to provide policing of same as well as to provide for the protection of any watersheds; and

WHEREAS, the Board of Aldermen has expressed its desires for the city to regulate the drilling of water wells within the city's jurisdiction; and

WHEREAS, the Board of Aldermen has reviewed and examined the proposed wellhead protection/water well drilling regulations as set out herein to promote the health, safety, morals, and general welfare of the community and the safe, orderly, and healthful development of the city of Sweeny, Texas; now, therefore,

THE CITY COUNCIL OF THE CITY OF SWEENY, TEXAS DOES HEREBY ORDAIN THE FOLLOWING:

SECTION B. Findings of Fact

(1) It has been determined that potential sources of contamination exist which may threaten the integrity of the city of Sweeny's public water supply, and consequently, the health, safety, commerce, public services, property, and the general welfare of the public.

(2) These potential sources of contamination are created by a cumulative effect of anthropogenic and/or natural activities taking place within sufficient proximity to the city's public water supply or source of said supply as to pose a threat of contamination.

SECTION C. Statement of purpose

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to contamination of the public water supply to maximize groundwater protection/pollution abatement control procedures, and minimize land use restrictions that:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly pollution remediation projects;

(3) Minimize regulations on land use;

- (4) Minimize business interruptions.
- (5) Minimize damage to public facilities and utilities such as water mains, sewer lines, and treatment facilities;
- (6) Insure that the public is provided with a safe potable water supply now and for future generations;
- (7) Protect the natural resources of the state.

SECTION D. Methods of Reducing Potential Contamination

In order to accomplish its purposes, this ordinance shall employ the following methods:

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- (1) Establish a wellhead protection area (WHPA) based on a five year time of travel.
- (2) Restrict or prohibit uses within the WHPA that pose risks of contamination to the public water supply.
- (3) Control anthropogenic activities within the WHPA that may increase the threat of potential contamination of the public water supply.
- (4) Frequent monitoring of existing and future anthropogenic activities within the WHPA that have been identified as potential sources of contamination.
- (5) Enforcement of all applicable laws governing pollution abatement and control, storage and transport of hazardous or toxic materials, and collection, storage, and transport and treatment of municipal and industrial sewage.
- (6) Develop contingency plans for alternative drinking water supplies to help mitigate contamination of the current public water supply.
- (7) Inventory all potential sources of contamination within designated WHPA(s) every (3) three years.
- (8) Enforcement of state and local laws regulating on-site sewage systems.
- (9) Prohibition of storage of hazardous or toxic materials within the WHPA that is upgrade of the PWS well.

(10) Enclosure of the PWS well within a fenced enclosure accessible only via a locked gate. The well number shall be posted on the fence.

(11) Posting of signs that state "Wellhead Protection Area, City of Sweeny" around the perimeter of the WHPA(s) and governing ordinances.

(12) Regulation of the construction, operation, correction and abandonment of water wells within both the city limits and the ETJ.

(13) Develop and implement an emergency response plan to deal with potential contamination events.

(14) Public education.

Article 2

Wells

SECTION A. Powers and duties of Board of Aldermen

The Board of Aldermen of Sweeny or its designated agent or representative shall have the following powers:

(1) To make or have made examinations of all wells within the city and all wells outside the city limits which by law is under the jurisdiction of the city, privately owned or otherwise;

(2) To make or have made at any time the necessary analyses for tests of water therefrom;
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(3) To go upon the land and property of the owner of a well for that purpose:

(4) To require the owner to furnish all information requested concerning a well, including, in the case of new wells, complete logs of the well showing depth to the aquifer through all geologic formations encountered:

(5) to supervise the construction, repair, abandonment and plugging of wells with and the operation of such wells. The Council or its agent shall keep a register of all wells within the area defined in sub-paragraph (1) above, which shall show the name of the owner, the location and date of construction of each well, its depth and diameter, the purpose for which the well was constructed, and if abandoned, the date of abandonment.

All acts authorized to be done by the Board of Aldermen may be performed by such persons as

may be authorized by such Council to act for it.

SECTION B: Compliance with Article

It shall be deemed a violation of this article for any person to fail or refuse to comply with any order of the Board of Aldermen made in conformity with and under the authority of this article.

SECTION C. Scope of Article

The provisions of this article shall apply to all wells or other openings greater than ten (10) feet in depth. Furthermore, the owner of any proposed well shall be required to apply and receive from the City a permit to construct such a well or opening, the application for which shall supply all the information required under Section E, and for such permit the City shall charge and receive the fee hereinafter provided for.

SECTION D. Permit - Required for Work on Wells

It shall be unlawful for any person to drill or otherwise construct, repair, correct, abandon or plug a well, or to engage upon such work, within the limits of the area defined in Section A (1), or to employ anyone else to engage in such work, without first applying for and securing a permit from the Board of Aldermen or a duly authorized agent thereof. Such permit may be granted with the approval of the Board of Aldermen's authorized agent to any person who files with the city the application hereinafter provided for and pays the fee hereinafter required, and complies with all other provisions of this article applicable to him.

SECTION E. Same - Application

Every application for a permit for the drilling, construction, repair and correction, abandonment of plugging of a well, shall state the name and address of the owner thereof, the purpose for which the permit is desired, which shall be done or more of the acts above-mentioned: the definite location of the well or proposed well; its approximate depth; and if for a permit for the drilling or construction or repair and correction of a water well, the estimated amount of water to be, or which is pumped daily, monthly or annually, and the use or uses for which the water will be or is required; if for a permit for the drilling or construction or for the repair and correction of a well, the proposed method of drilling or construction, or the proposed method of repair and correction, and the kind of equipment to be used, and in all cases, the name of the contractor(s), and the license number issued by the Texas Water Well Drillers Board, if done through a contractor, whom the owner

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desires to drill or construct, repair and correct, or do the work pursuant to an abandonment of a well in compliance with this article.

SECTION F. Same - Inspection Before Issuance

It shall be the duty of the Board of Aldermen or its designated agent or representative to inspect the property where any well is to be drilled, sunk, dug, or bored and to refuse the issuance of a permit to drill, sink, dig or bore a well in a place which does not meet with its approval as to drainage and other sanitary conditions.

SECTION G. Same - Execution

All permits shall be executed in triplicate, one copy to be delivered to the applicant and two copies to be retained in the office of the City of Sweeny.

SECTION H. Same - Additional Permits

It shall be unlawful for any applicant who obtains a permit to construct a well of a certain depth, to extend such well to a depth exceeding the depth provided for in such permit without first obtaining an additional permit therefor.

SECTION I. Same - Fees - Amounts

The fees to be paid to the City for the permits required by this article shall be as follows:

1. Permit for the drilling or construction of a new well up to fifty feet deep, ten dollars.
2. Permit for the drilling or construction of a new well fifty feet deep to one hundred fifty feet deep, twenty dollars.
3. Permit for the drilling or construction of a new well one hundred fifty feet deep to four hundred feet deep, thirty dollars.
4. For the drilling or construction of a new well over four hundred feet deep, the fee last named and in addition thereto, for each one hundred feet or fraction thereof in excess of four hundred feet, ten dollars.
5. Permit to repair or correct a defective well, twenty dollars.
6. Permit to abandon or plug a well, five dollars.

SECTION J. Same - Same - Disposition

All fees and other money collected by the City by virtue of this article shall be expended by such City to cover the expense of making examinations of wells within the City, to make or have made the necessary analyses and test of water therefrom, to supervise the construction, repair, abandonment and plugging of wells and their operation, and such other expenses as may be necessary to enforcement of this article.

SECTION K. Casing of Wells Required

Every well constructed, whether drilled, dug, or excavated, which encounters salt water or water containing mineral or other substance injurious to health or vegetation, shall be securely plugged and sealed or cased in such manner that the waters be confined to the stratum or strata in which found, and all wells shall be so constructed and cased in such manner that the waters be confined to the stratum or strata in which found, and all wells shall be so constructed and cased so that no

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water from one stratum can be reason of the construction of the well come in contact with waters from another stratum. The casing shall be set in the top of tile stratum from which water is to be taken and shall be cemented in place by suitable method to be approved by the Board of Aldermen or its authorized agent to the end that cement be forced up around the outside of the casing from the bottom of the casing to the surface of the ground so that all water found in the strata, except that from which water is to be used, shall be scientifically developed to accomplish the purpose mentioned, such better method may be prescribed by the City in lieu of cementing. The casing used shall be of weight per foot, not less than the following:

Size of Casing Minimum Weight Per Foot

4 inch	10 pounds
5 inch	14 pounds
6 inch	18 pounds
8 inch	28 pounds
10 inch	40 pounds
12 inch	49 pounds
15 inch	60 pounds
18 inch	80 pounds
20 inch	89 pounds

The casing shall be mechanically continuous from the point of setting the bottom of the well to a point not less than twelve inches above ground level and shall be so installed as to make

impossible any leakage as against any pressures which may be encountered.

If casing is of two or more diameter sizes, the different sizes shall be connected with threaded nipples or be sealed with rubber, cement or lead or by some other manner satisfactory to the City of Sweeny.

SECTION L. Wells Contaminating Other Water Sources

Any wall or other opening located inside the area defined in Section A (1) which penetrates the underground water supply and which pollutes or contaminates any other wells or the city's water supply, is declared a nuisance, and on notice to the owner of such well, or to the operator therefor, or to his agent in charge of the well or of the property on which it is situated, issued by the Board of Aldermen or its agent such nuisance shall be abated by the owner within ten days from the date of such notice by filling and plugging the well or opening in the manner provided for in this article for abandoned wells; and if he shall fail to abate such nuisance within such time, or if owner or his agent, such Council or its agent shall have the right to go on the land or property upon which the well is situated and abate such nuisance in the manner provided and the owner thereof shall be liable to the City for the cost of such work and shall pay such cost upon demand.

SECTION H. Defective Wells

Every well whether dug or drilled, which for any reason does not completely prevent the mixing of water or other liquid from above and below the source of the City's water supply, or which for any reason would tend to pollute or contaminate any other well or the water in the source of the City's water supply, shall be considered a defective well and the Board of Aldermen or its agent on its own initiative or upon information or complaint from any source may make such an examination of any well suspected of being defective and if such an examination of any well suspected of being defective and if such examination indicates in the opinion of the Council or its agent that the well is a probable source of contamination of the City water supply or any other well, or that the water from such well is unsafe for human consumption, shall issue written instructions to the owner or his agent in charge of such

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well or the property with the provisions of this article, and prescribe a time which in its judgment, under all the circumstances, is reasonable within which such instructions shall be complied with. It shall be unlawful for the owner or operator of such defective well to fail to comply with such instructions within the time prescribed by the Board of Aldermen or its authorized agent.

SECTION N. Abandoned Wells

An abandoned well is: (a) a defective well which, in the judgment of the Board of Aldermen or its agent, cannot be corrected to comply with the requirements of this article, or (b) any well which has been continuously out of use for a period of six (6) months, or longer. Whenever any wells have not been in active use for more than two years, the owner or operator of such well shall report the fact to the City. Every abandoned well shall be filled and plugged with such materials and in a manner approved by the Texas Water Well Drillers Board that will, in their and the City's judgment, prevent the pollution and contamination of the City's water supply or the contamination of any other well within the limits of the City, and such filling and plugging shall be done under the supervision of the City and at the expense of the owner of such well.

Whenever the City shall receive notice from any source of the existence of an abandoned well which has not been plugged and filled in accordance with the provisions of this article and/or the Texas Water Well Drillers Board, it shall notify the owner or agent in charge of such well or of the property upon which it is situated that such well is abandoned and shall instruct him to fill and plug such well in accordance with this article; and the owner or operator of such well shall comply with such order within sixty days after its date. Should he fail to so comply within such period or if, after using reasonable diligence, should the City fail to locate the owner or the agent in charge of such well or of the property upon which the well is situated, the council or its agent may go on the land or property upon which the well is situated and fill and plug such well in the manner required by this article. Whenever it becomes necessary for the City to fill and plug any abandoned well the owner thereof shall be liable to the City for the cost of doing such work and shall pay such cost upon demand.

SECTION O. Wells Outside City: Abating Nuisance, Drilling

The owner or lessee of property on which any well heretofore drilled or that may be hereafter drilled outside the City which is found to be contaminating or polluting influence to the underground water-bearing strata from which the municipal water supply of the City is taken or drawn or may hereafter be taken or drawn, as well as the owner or lessee of all wells drilled inside the area defined in Section A (1) shall be subject to all the provisions of Sections L and H and all other provisions of this article relating to the protection of the water supply of the City, and any such contaminating well may be abated as provided therein. Any person desiring to drill a well outside of the City at any location within the radius of one-half (½) mile outside the City, prior to drilling such well shall fully comply with all provisions of this article relating to the protection of the water supply of the City, and upon failure to do so shall be punished as provided herein.

SECTION P. Wells Imposing Immediate Threat; Abating Nuisance

Any well or other opening located inside the area defined in Section A (1) which, in the sole opinion of the Board of Aldermen or its agents, presents an immediate threat and menace to the health, morals, safety or general welfare of the public is declared to be a nuisance. The Board of Aldermen or its agents shall have the right to go on property upon which such wells is situated and abate the nuisance In a temporary

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manner. Such well shall thereafter be filled and plugged by the owner after the giving of required notice and in such manner set out in Section N hereof. The owner thereof shall be liable to the City for the cost of doing such temporary work under this Section and shall pay such cost upon demand.

SECTION Q. Violation and Penalties

A person who violates any of the provisions of this article is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10.00 nor more than \$2,000.00. Each day a violation occurs constitutes a separate offense.

SECTION R. Effective Date

This ordinance shall become effective upon the expiration of ten (10) days after its passage.

ARTICLE 3

GENERAL PROVISIONS

SECTION A. Lands to Which This Ordinance Applies

The ordinance shall apply to all areas located within the designated WHPA(s) as adopted by the Board of Aldermen. Article 2 shall apply to all areas within the City limits of Sweeny, Texas and the areas outside the City limits which fall under the city's jurisdiction.

SECTION B. Basis for Establishing the Wellhead Protection Area(s)

The wellhead protection area(s) shall be delineated by the Texas Water Commission using a site specific method stipulated in the Texas Wellhead Protection Program Description and will be based on a five (5) year time of travel. Information required for this delineation will include the maximum anticipated pumpage of each well in gallons per minute (GPM), the screened interval for each well, and depth of each well. The respective wells shall be plotted on a City map and submitted to the State for delineation and compilation of a Wellhead Protection Report. An inventory of the WHPA(s) will be conducted by the local Community, the results of which will be submitted to the State for inclusion in the report which will be presented to the community upon completion.

SECTION C. Establishment of Permit

A permit governing construction, operation, correction, and abandonment of wells shall not impinge on existing permitting requirements currently in effect nor is it the intent of this

ordinance to invalidate their purpose.

SECTION D. Compliance with Article

It shall be deemed a violation of this article for any person to fail or refuse to comply with any order of the Board of Aldermen made in conformity with and under the authority of this article.

SECTION E. Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

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SECTION F. Interpretation

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. Warning and Disclaimer of Liability

The degree of protection of the local community's PWS wells and public water supply is considered reasonable for regulatory purposes and is based on scientific and engineering considerations along with best professional judgment. It is recognized that not all potential sources of contamination are unavoidable and that a contamination event may occur due either to manmade or natural causes. This ordinance does not imply that the WHPA(s) will totally preclude a contamination event from taking place. This ordinance shall not create liability on the part of the community or any official or employee thereof for any damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE 4

ADMINISTRATION

SECTION A. Designation of the Wellhead Protection Area Administrator

The _____ is hereby appointed the Wellhead Protection Area Administrator to administer and implement the provisions of this ordinance and other appropriate sections of Chapter 26.177 of the Texas Water Code.

SECTION B. Duties & Responsibilities of the Wellhead Protection Administrator

Duties and responsibilities of the Wellhead Protection Area Administrator shall include, but are not limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2) Review water well permit applications and other permit applications where applicable to determine whether the proposed activity in the WHPA will pose a threat to the integrity of the public water supply.
- (3) Review, approve, or deny (or recommend denial where authority for denial is not granted) all applications for permits required by the adoption of this ordinance.
- (4) Review permits for proposed development within the WHPA(s) to assure that all necessary permits have been obtained from those Federal, State, or local government agencies from which prior approval is required.
- (5) where interpretation is needed as to the exact location of the boundaries of the WHPA(s) (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Wellhead Protection Administrator shall make the necessary interpretation.
- (6) When WHPA delineation has not been provided by the State (for example, upon completion of a new PWS well) the Administrator shall delineate a one-quarter mile radius around the well and administer it in accordance with this ordinance until such time as site specific determination can be made.

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- (7) WHPA Administrator shall coordinate the City's emergency response activities in the event a potential contamination event occurs.
- (8) The WHPA Administrator shall also maintain an active list of potential sources of contamination which shows the physical location, street address, contact, and telephone number. This list shall be kept open for public inspection.

SECTION C. Noncompliance and Penalties

Persons and/or entities found to be in violation of this ordinance shall be notified by the Board of Aldermen or its agent in writing. A person who violates any of the provisions of this ordinance is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10.00 nor more than \$2,000.00. Each day that a violation occurs constitutes a separate offense.

SECTION D. Variance - Procedures

- (1) The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Wellhead Protection Area Administrator in the enforcement or Administration of this ordinance.
- (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (4) No variance may be requested nor granted as a means to circumvent the intentions of this ordinance or as a remedy for a violation of this ordinance (i.e. a variance cannot be issued after the fact).
- (5) The Wellhead Protection Area Administrator shall maintain a record of all actions involving an appeal.
- (6) Upon consideration of the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
- (7) Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary considering the potential threat of contamination of the PWS well and aquifer, to afford relief.
 - b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant a variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in additional threats to the public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Any application to whom a variance is granted shall be given written notice that the activity receiving this variance will decrease the travel time for potential contaminants to reach the PWS well and that any and all liability of a contamination event as a result of this activity receiving the variance is on the variance holder.

Furthermore, the City, its officers and services, as well as its employees are released from any responsibility and liability for any damages and/or contamination events due to activity receiving

the variance.

(8) Variances may be issued by a community for new development necessary for the conduct of tile functionally dependent use provided that (I) the criteria outlined in Article 4, Section D(1)-(8) are met, and (ii) the development is protected by methods that minimize the risk of a contamination event and creates no additional threats to public safety.

ARTICLE 5

HEADINGS

The headings to sections contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of the substantive provision to which the heading applies unless the context so requires.

ARTICLE 6

ORDER OF PREFERENCE

Unless otherwise stated, a listing of factors, criteria or subjects in the ordinance does not constitute an order of preference.

ARTICLE 7

SEVERABILITY

If any provision of this ordinance is held invalid, such invalidation shall not affect any other provision which can be given effect without the invalid provision, and to this end tile provisions of this ordinance are declared to be severable.

CERTIFICATION

It is hereby found and declared by SWEENY CITY COUNCIL that the wellhead protection area(s) (WHPA(s)) located within the corporate boundaries and/or extraterritorial jurisdiction have been recognized and are adopted as a means to protecting the City of Sweeny's drinking water supply; that contamination of the wells and subsequently the aquifer from which the water is drawn would result in excessive public expenditures, endanger the lives and health of the public, threaten commerce, and damage public utilities; in order to effectively comply with the Chapter 26.177 of the Texas Water Code; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective within ten (10) days after its adoption by the Board of Aldermen.

Therefore, a threat to the public drinking water supply is hereby declared to exist, and this ordinance, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from ten (10) days after its passage and approval.

PASS AND ADOPTED ON THIS THE 18TH day of December, A.D. 1990.

HARRY BEVERLY, MAYOR OF THE CITY OF SWEENY, TEXAS

ATTEST:

EXA MAE KELLER, CITY SECRETARY
OF THE CITY OF SWEENY, TEXAS